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IN THE

SUPREME COURT OF THE UNITED STATES

1966

NO. ~~1254~~ 136

RICHARD H. M. SWANN,
and
SUPERVISOR OF ELECTIONS
of Dade County, Florida
Appellants,

vs.

TOM ADAMS, Secretary of State of the State of Florida; E. L. GATES, Supervisor of Registration of Broward County, Florida; and W. B. FREEMAN, Supervisor of Registration of Monroe County, Florida,
Appellees.

On Appeal From the United States District Court
In and For the Southern District of Florida

STATEMENT OF APPELLEES OPPOSING JURISDICTION AND MOTION TO AFFIRM

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TOPICAL INDEX

	Page
PRELIMINARY STATEMENT	1-2
PRIOR PROCEEDINGS	2-3
STATEMENT OF FACTS	3-4
STATUTES INVOLVED	4
QUESTION PRESENTED	5
ARGUMENT	5-17
CONCLUSION	17

APPENDICES

APPENDIX A	App. 1-10
A-1	App. 11-13
A-2	App. 14-16
APPENDIX B	App. 17-20
B-1	App. 21
B-2	App. 22-28
B-3	App. 29-31
APPENDIX C	App. 31-32

TABLE OF CITATIONS

	Page
Baker v. Carr, 369 U.S. 186, 7 L. Ed. 2d 663, 82 Sup. Ct. 691 (1962)	10
Hamilton Trust Co. v. Cornucopia Mines Co., 223 Fed. 494 (1915); cert. den. Hamilton Trust Co. v. John L. Bosjer. Kr. 230 U.S. 641 (1951)	14
In Re Advisory Opinion to the Governor, 150 So. 2d 721 (Fla. 1963)	12
Jordan v. Green, 173 So. 2d 448 (Fla. 1965)	12
Lucas v. Colorado General Assembly, 377 U.S. 713, 12 L. Ed. 2d 632, 84 Sup. Ct. 1472 (1964)	8
Maryland Committee v. Tawes, 377 U.S. 656, 12 L. Ed. 2d 595, 84 Sup. Ct. 1442 (1964)	11
Nolan v. Rhodes, 251 F. Supp. 584 (1965, aff. per curiam ___ U.S. ___, 15 L. Ed. 2d 616, 86 Sup. Ct. 716 (1966)	10
Reynolds v. Sims, 377 U.S. 533, 12 L. Ed. 2d 506, 84 Sup. Ct. 1362 (1964)	7

TABLE OF CITATIONS — Continued

	Page
Schaefer v. Thompson, 251 F. Supp. 450 (1965); aff. per curiam Harrison v. Schaefer, ____ U.S. ____, 15 L. Ed. 2d 750, 86 Sup. Ct. ____ (1966)	7, 8
Sobel v. Adams, 208 F. Supp. 316 (1962)	2,11,12
Sobel v. Adams, 214 F. Supp. 811 (1963)	2
Sperry Rand Corp. v. Bell Telephone Laboratories, Inc. 317 Fed. 2d 491 (1963)	14,15
Stout v. Bottorff, 246 F. Supp. 825 (1965)	13
Toombs v. Fortson, 241 F. Supp. 65 (1965)	8,9
Yancey v. Faubus, 238 F. Supp. 290, (1965) aff. per curiam, Crawford County Bar Association v. Faubus, ____ U.S. ____, 15 L. Ed. 2d 750, 86 Sup. Ct. ____ (1966)	9
Yancey v. Faubus, 251 F. Supp. 998 (1965)	9

FLORIDA CONSTITUTION

Article VII, Section 2	11

SESSION LAWS

Chapter 66-1, Laws of Florida	4

IN THE

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NO. 1314

RICHARD H. M. SWANN,
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Appellants,

vs.

TOM ADAMS, Secretary of State of the State of Florida; E. L. GATES, Supervisor of Registration of Broward County, Florida; and W. B. FREEMAN, Supervisor of Registration of Monroe County, Florida,
Appellees.

On Appeal From the United States District Court
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STATEMENT OF APPELLEES OPPOSING JURISDICTION AND MOTION TO AFFIRM

PRELIMINARY STATEMENT

On May 16, 1966, the Appellants filed in this Court their Jurisdictional Statement supplementing their appeal from an order of the United States District Court for the Southern District of Florida, dated March 18, 1966, which order approved, as meeting constitutional standards, the reapportionment statute enacted by the Florida Legislature. The Appellees, believing that the matters set forth

herein will demonstrate the lack of substantialness in the question sought to be presented by such appeal, file this their Statement in Opposition to Appellants' Jurisdictional Statement, and include their Motion to Affirm the Judgment of the Court below, upon the ground that the questions on which the decision of this cause depends are so unsubstantial as not to need further argument.

PRIOR PROCEEDINGS

The opinion and order appealed from were entered on March 18, 1966, by the United States District Court for the Southern District of Florida in which the District Court ruled that House Bill 17-X(66), the plan of apportionment of the Florida Legislature, met federal constitutional standards and was accepted by that court as a standard to be used in selecting members for the 1967 session of the Florida Legislature; the beforementioned opinion and order are imprinted herein as Appendix B. Earlier opinions and orders entered in this cause are listed as:

(a) *Sobel v. Adams*, 208 F. Supp. 316 (S.D. Fla., 1962).

(b) *Sobel v. Adams*, 214 F. Supp. 811 (S.D. Fla., 1963).

(c) *Swann v. Adams*, 378 U.S. 553. Listed herein as Appendix B-1.

(d) *Swann v. Adams*, (S.D. Fla., entered December 23, 1965), listed herein as Appendix B-2.

(e) *Swann v. Adams*, _____ U.S. _____; 34 U.S. L. Week 3291, decision entered February 25, 1966. Listed herein as Appendix B-3.

STATEMENT OF FACTS

On February 25, 1966, this Court entered its opinion and order reversing the District Court's order of December 23, 1965, which held, inter alia, that the reapportionment of the State of Florida under HB 19-XX(65), although unconstitutional, would be accepted as an interim plan until sixty days after the adjournment of the 1967 regular session of the Florida Legislature. This Court also remanded the case to the District Court with instructions that a valid reapportionment be made for the 1966 elections (Appendix B-3).

The Governor of Florida, guided by the oft-repeated pronouncement by this Court and many Federal District Courts that they are reluctant to reapportion State legislatures by judicial fiat until it becomes evident that a valid reapportionment cannot be affected by the Legislatures involved, called the Florida Legislature into special session commencing March 2, 1966, to make another effort to reapportion in accordance with constitutional standards. On March 9, 1966, the Special Session of the Florida Legislature duly passed and enacted House Bill 17-X(66), Chapter 66-1, Laws of Florida, (Appendix A) which was approved by the Governor on March 10, 1966.

House Bill 17-X(66) was then presented to the U.S. District Court for the Southern District of Florida, and the Appellees herein moved the Court to accept the bill as a valid reapportionment scheme for the Legislature of the State of Florida. The District Court, after hearing arguments on the Appellees' motion and other pending matters, entered its Order on March 18, 1966, approving H. B. 17-X(66) as meeting constitutional standards and accepting it as a standard to be used in selecting members for the 1967 session of the Florida Legislature. Since the entry of the District Court's Order on March 18, 1966, candidates have qualified for office and Primary elections have been held in Florida.

The Appellants are now before this Court requesting that it take jurisdiction over this matter and are assailing the provisions of House Bill 17-X(66), as being unconstitutional.

The Appellees are confident that arguments presented herein will demonstrate that the lower Court did not abuse its discretion in approving HB 17-X(66), that the Appellants have not been harmed in any way and have no further standing in this cause, and that the questions presented are so unsubstantial as to not need further argument.

STATUTES INVOLVED

Under Attack in this proceeding is House Bill 17-X, Chapter 66-1, Laws of Florida (Appendix A).

QUESTIONS PRESENTED

I. Does the approval of House Bill 17-X(66), by the United States District Court constitute an abuse of discretion vested in said Court?

II. Do the Appellants have any further legal standing to maintain this appeal and are the questions substantial enough to warrant this Court taking jurisdiction over these matters?

ARGUMENT

I. DOES THE APPROVAL OF HOUSE BILL 17-X(66) BY THE UNITED STATES DISTRICT COURT CONSTITUTE AN ABUSE OF DISCRETION VESTED IN SAID COURT?

The Appellees submit that this question should be answered in the negative.

In order to provide the Court with an analysis of House Bill 17-X(66), the Appellees submit the following to the court:

(1) House Bill 17-X(66), provides for a bicameral Legislature of 48 Senators and 117 Representatives.

(2) The maximum population variance ratio in the reapportioned Senate in the State of Florida is 1.30 to 1. 48.61% of the population elect 50% of the Senate. The average population per Senator is 103,158. The smallest

senatorial district is 87,847 and the largest is 114,053, or a maximum population variance ratio of 1.30 to 1 (Appendix A-1).

(3) With respect to the House the maximum population variance ratio in the reapportioned House of Representatives of the State of Florida is 1.41 to 1. 50.43% of the population elect 50.43% of the House of Representatives. The average population per member is 42,321. The smallest representative district is 34,584 and the largest is 48,785, or a maximum population variance ratio of 1.41 to 1 (Appendix A-2).

A further analysis of House Bill 17-X(66) will indicate that only one senatorial district exceeds 15% with a maximum of 15.09% under average variation (See Appendix A-1). In the House, an analysis of the variation indicates that 3 house districts exceed 15% with a maximum variance of 18.28%. These three districts make up a total relatively small number of 7 members of the 117 member House of Representatives.

In view of the foregoing analysis your Appellees concede that the legislative plan as found in House Bill 17-X (66) does not meet precise mathematical exactitude, nor does it stay within the confines of the often referred to "15% variation"; but the plan, when considered as a whole, does use population as the major consideration in the apportionment of the Legislature of the State of

Florida, and when reviewed on its own merits your Appellees feel that the minute deviations from population can be justified.

This Court has expressed in the multitude of reapportionment cases that have been before it, that a state "may legitimately desire to maintain the integrity of various political subdivisions, insofar as possible, and provide for compact districts of contiguous territory in designing a legislative apportionment scheme . . . ," and that "whatever the means of accomplishment, the overriding objective must be *substantial* equality of population among the various districts so that the vote of any citizen is *approximately* equal in weight to that of any other citizen in the state." *Reynolds v. Sims*, 377 U.S. 533. In referring to the language from *Sims*, supra, your Appellees submit that the court utilized the words "substantial" and "approximately." If this court meant *exact* rather than *"substantial"* or *"approximately"* then there would be a necessity for mathematical exactitude in arriving at a constitutional apportionment plan. Again, to demonstrate that this Court and other Federal District Courts do not require mathematical exactitude and consider each plan on its merits, the Appellees refer this Court to the Decision in *Schaefer v. Thompson*, 251 F. Supp. 450 (D.C. Wyoming 1965), wherein the District Court, in its own reapportionment plan for the Wyoming Senate, formulated a plan with a ratio of 2.08 to 1, and in so doing, the Court took into consideration the preservation of county boundaries and combined only contiguous counties. The opinion

of the lower court in the *Schaefer* case was affirmed Per Curiam by this Court in *Harrison* v. *Schaefer* ..... U.S. ..... 15 L. Ed. 2d 750, 86 Sup. Ct. ..... (1966).

Your Appellees would also direct the Court's attention to the fact that in *Lucas v. Colorado General Assembly*, 377 U.S. 713, 12 L. Ed. 2d 632, 84 Sup. Ct. 1472, this Court, in declaring the apportionment plan before it as unconstitutional, inferentially approved a ratio of 1.7 to 1 with respect to the House, but because of the vast disparity in the Senate, this court declared the Colorado plan as unconstitutional since the two houses as constituted in the plan were not severable and therefore the whole plan was required to fall. When we compare the plan in the *Lucas* case together with House Bill 17-X as passed by the Florida Legislature, it is clear that the maximum population variance ratio in the Senate, is 1.30 to 1, and the maximum population variance ratio in the House, 1.41 to 1, is a more nearly perfect plan.

The Appellants have made special reference to the often referred to 15 per cent variation allowable in reapportionment cases which originally developed in *Toombs* v. *Fortson*, 241 F. Supp. 65 (1965), wherein the court stated:

> "We decline to set a mathematical formula to be followed but we do hold that a variance of more than 15 per cent would be difficult, if not impossible, to justify. It may be that there will be some later elucidation by the Supreme Court on this complex ques-

tion but until such event occurs, we will base any test as to the reasonableness of variances on the departure figure of 15 per cent."

The beforementioned standard was again pronounced in *Crawford County Bar Association v. Faubus*, 238 F. Supp. 290, affirmed without opinion by this Court at 34 U.S. L. Week 3289. See also *Yancey v. Faubus*, 251 F. Supp. 998 (Ark. 1965) affirmed without opinion, 34 U.S. L. Week 3289, wherein the court stated:

". . . the authorities do suggest that deviation of not more than 15% either way is tolerable."

In dealing with the 15% variation principle the U. S. District Court of Florida in its order of December 23, 1965, held the following:

". . . precise exactness cannot of course be achieved but only such minor departures as necessity demands will be permittted. Variations are to be sanctioned only when they cannot be avoided. We do not think it can be assumed that the 15% variance allowed in *Toombs v. Fortson* (N.D. Ga. 1965), 241 F. Supp. 65, established a rule of tolerence that will be followed as a legal principle."

Your Appellees submit that a most careful analysis of House Bill 17-X(66) will indicate that there is no built-in 15 per cent deviation in the Florida plan of apportionment and, at best, the variations are only in those instances where they could not be avoided, taking into consideration

the integrity of county boundaries and compatible, contiguous territories. The plan for Florida apportionment would reflect a more perfect tolerance than even that in the Ohio apportionment scheme, which had a built-in 15% variance ratio and was approved by the District Court and affirmed by this Court, see *Nolan* v. *Rhodes*, 251 F. Supp. 584, (1965), affirmed ..... U.S. ....., 15 L. Ed. 2d 616, 86 Sup. Ct. 716 (1966).

The Appellants have also contended that the District Court abused its discretion in attaching a presumption of validity to the plan enacted by the Florida Legislature on the basis that the plan was not adopted by a constitutional legislature. We do not agree that the Legislature of the State of Florida as it existed when House Bill 17-X (66) was passed was an illegal or outlawed Legislature and submit that the last legislative body elected by the people of the State of Florida is a *de jure* legislature, or at least a *de facto* legislature, and is capable of functioning as such. This premise was also recognized by Justice Douglas in his separate concurring opinion in *Baker* v. *Carr*, 369 U.S. 186 at page 240:

> "The recent ruling by the Iowa Supreme Court that a Legislature, though elected under an unfair apportionment scheme, is nonetheless a Legislature empowered to act (*Cedar Rapids* v. *Cox*, 252 Iowa 948, 964, 108 NW 2d 253, 262, 263; cf. *Kidd* v. *McCanless*, 200 Tenn 273, 292 SW 2d 40) is plainly correct."

The foregoing principle was again recognized later in *Maryland Committee v. Tawes*, 377 U.S. 656, wherein the court held:

> ". . . With the Maryland constitutional provisions relating to legislative apportionment hereby held unconstitutional, the Maryland Legislature presumably has the inherent power to enact at least temporary reapportionment legislation pending adoption of the state constitutional provisions relating to legislative apportionment which comport with federal constitutional requirements."

In conclusion your Appellees submit that there just cannot be a legislative void in any state government.

In their Jurisdictional Statement the Appellants allude to the fact that their plan was made in accord with the size requirement contained in Art. VII, Section 2 of the Constitution of Florida, which provides in part:

> "The Legislature shall consist of not more than 32 members of the Senate and not more than 68 members of the House of Representatives."

In their footnote on page 9 it is noted that the above quoted section of the Florida Constitution has never been repealed. Your Appellees submit that three recent cases have declared all limitations contained in the Florida Constitution covering the size of both houses of the legislature void and inoperative. See *Sobel v. Adams* (DCSD Fla.), 208

F. Supp. 316; *In Re Advisory Opinion to the Governor* (Fla.), 150 So. 2d 721; *Jordan v. Green* (Fla.), 173 So. 2d 448.

In the final analysis, it appears from the Appellants' position that they feel that the lower court has abused its discretion by not adopting the plan submitted by a group representing a small segment of the State of Florida over and above the plan adopted by the Legislature of the State of Florida, which is the representative group of all the people of Florida. The Appellees submit that if any presumption should be given to the plans submitted to the lower court then the presumption should be in favor of House Bill 17-X(66) which is an expression of the will of the people of the State of Florida through their Legislature.

II. DO THE APPELLANTS HAVE ANY FURTHER LEGAL STANDING TO MAINTAIN THIS APPEAL AND ARE THE QUESTIONS SUBSTANTIAL ENOUGH TO WARRANT THIS COURT TAKING JURISDICTION OVER THESE MATTERS?

1. THE APPELLANTS HAVE NO FURTHER LEGAL STANDING TO MAINTAIN THEIR APPEAL.

There is a fundamental rule of law that no person may seek the aid of the courts, state or federal, to rule upon a question unless such a person has a direct, immediate, or personal interest to be preserved. The remaining Appellants in this cause have maintained their position in this suit because they had presented a class action for them-

selves and other persons similarly situated in Dade County, Florida. Your Appellees respectfully submit to the Court that further analysis of House Bill 17-X(66) would indicate that in the Senate plan the variation in the Senatorial Districts affecting Dade County reveal that there is a 5.88% variation in over-representation. In the House of Representatives the plan is more nearly perfect in that there is only 0.43% variation from an average representation. Your Appellees submit that there has been no showing that there has been any harm done to the Appellants or other similarly situated voters in Dade County.

The fundamental rule that a person may not seek the aid of the judiciary to rule upon a question unless the person has a direct, immediate and personal interest to be served or there is a showing that such person will be harmed has been applied in reapportionment cases. [See *Stout v. Bottorff*, 246 F. Supp. 825 (Ind. 1965) wherein a resident of Marion County, and a member of the Senate of the 94th General Assembly of Indiana, was without standing to assert that the 1965 Apportionment Act was invalid because it diluted votes of some residents of other parts of the state, where he made no complaint of debasement of his vote or those of Marion County voters generally.]

The Appellees concede that the Appellants had standing in this case prior to these proceedings because they had demonstrated to the Courts the unconstitutionality of apportionment of the State of Florida as it applied to them as residents of Dade County; but there is another fundamental rule concerning "standing" which provides that

with respect to appellate jurisdiction every party desiring to appeal from a judgment must be injured, prejudiced or aggrieved by the terms of the judgment sought to be appealed.

> "It is a fundamental rule of appellate jurisdiction that every person desiring to appeal from a decree must be interested in the subject-matter of the litigation, and the interest must be immediate and pecuniary and not a remote consequence of the judgment. The interest must be substantial, and a merely nominal party to an action cannot appeal. *The interest must also be subsisting, for although a party may have an appealable interest at the commencement of the suit, if that interest has terminated before the entry of the judgment or decree sought to be appealed from, he cannot appeal.*" [Emphasis supplied]

(*Hamilton Trust Co. v. Cornucopia Mines Co.*, 223 Fed. 494, 499, cert. den. 239 US 641.)

See also:

> "The defendant makes some attempt to claim the right by this appeal to vindicate what it calls the public interest. But, as regards the public interest, the defendant is a mere volunteer. With no claim of any special relationship to the issue it seeks to litigate it has no more status to represent the public interest than any man off the streets. • • •

"Authority is hardly needed for a proposition so obvious as that one who has no interest in the litigation, and who asserts no right which has been adversely affected by the decision of the lower court, cannot appeal from that decision. * * *"
(*Sperry Rand Corp. v. Bell Telephone Laboratories, Inc.*, 317 F. 2d 491, 493.)

In considering the foregoing cases and the analysis of House Bill 17-X(66) with respect to the position of the Appellants and other persons similarly situated in Dade County it is obvious that the Appellants no longer have standing or an interest in the decision that they seek to have reviewed by this Court.

2. THE QUESTIONS PRESENTED ARE UNSUBSTANTIAL.

The Appellants in their Jurisdictional Statement have attempted to build various "straw men" in the questions presented by them to this Court. In the second question on page 5 of said jurisdictional statement they assume the premise that there are certain counties under-represented to the extent of 15.09% in the Senate, which denied the Appellants due process or equal protection of the law in violation of the 14th amendment of the Constitution of the United States. An analysis of the question as presented by the Appellants indicates there is but one senatorial district which has 15.09% under-representation and it consists of Okaloosa, Walton and Holmes Counties, and does not in any way affect the representation of the Appellants or other voters in their senatorial district.

In the third question presented by the Appellants on Page 5 of said Jurisdictional Statement they assume the premise that there are deviations from mathematical equality in excess of 15% in 7 of the 117 House of Representative Districts. The Appellees' analysis of House Bill 17-X(66) indicates that the excess of 15% in the House of Representatives affects only three House of Representative Districts which encompass seven members of the House of Representatives; and again, they do not pertain to the House Districts in which the Appellants reside.

The Appellants further allude to the fact that there is a pattern of under-representation in the populous urban areas and over-representation for the sparsely settled rural counties in both legislative houses, as constituted in House Bill 17-X(66). Your Appellees submit that there is no pattern of discrimination with respect to rural or urban areas and the plan considered by the Lower Court has maintained population as its first and overriding consideration with an honest and sincere effort to maintain the integrity of county lines and compatible contiguous areas as an essential element for a constitutional apportionment of the State of Florida.

Lastly, the Appellants contend in question 8 beginning on page 7 of their jurisdictional statement that the three senators who are "grandfathered" or held over from the previous Senate, while other Senators are not so "grandfathered" or held over, deny the Appellants due process of law or equal protection of the law in violation of the 14th amendment of the Constitution. An analysis of this

contention in House Bill 17-X(66) will indicate that the hold-over Senators are those who represent the same constituents and same districts in which they were elected. There has been no shifting of district lines, no shifting of constituency, with regard to these Senators, and this certainly did not affect the Appellants or anyone residing in the Districts from which the Senators are elected since there has been no new constitutents added to their respective districts.

CONCLUSION

The Appellees respectfully submit that there has not been demonstrated in this appeal any abuse of discretion committed by the lower court, and that the Appellants do not have any further legal standing to maintain this appeal and the questions presented are so unsubstantial as to not warrant this court taking jurisdiction over this case, and the decision of the lower court should be affirmed without further argument.

Respectfully submitted

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APPENDICES

APPENDIX A

Chapter 66-1

House Bill 17-X

A bill to be entitled

An act to provide for the apportionment of the membership of the senate and the house of representatives of the legislature of the state of Florida; prescribing terms of office of members of both houses; providing for continuance in office by members until the general election in November, 1966; providing for elections; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. (1) The representation of the people of the state in the legislature of the state shall continue as now constituted until the general election to be held in November, 1966. Thereafter, the representation of the Florida legislature shall be as set forth in this law.

(2) The representation in the senate of the Florida legislature shall consist of 48 members representing districts and shall be apportioned as follows:

First District—Escambia and Santa Rosa counties.

Second District—Escambia and Santa Rosa counties.

Third District—Okaloosa, Walton and Holmes counties.

Fourth District—Bay, Washington and Gulf counties.

Fifth District—Alachua, Baker, Bradford, Calhoun, Clay, Columbia, Dixie, Franklin, Gadsden, Gilchrist, Hamilton, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Nassau, Putnam, Suwannee, Taylor, Union and Wakulla counties.

Sixth District—Alachua, Baker, Bradford, Calhoun, Clay, Columbia, Dixie, Franklin, Gadsden, Gilchrist, Hamilton, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Nassau, Putnam, Suwannee, Taylor, Union and Wakulla counties.

Seventh District—Polk county. The senator elected from the seventh senatorial district in 1964 as it then existed shall serve as the senator from the seventh district until the general election of 1968.

Eighth District—Alachua, Baker, Bradford, Calhoun, Clay, Columbia, Dixie, Franklin, Gadsden, Gilchrist, Hamilton, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Nassau, Putnam, Suwannee, Taylor, Union and Wakulla counties.

Ninth District—Duval county.

Tenth District—Duval county.

Eleventh District—Pinellas county.

Twelfth District—Indian River, Martin, St. Lucie and Okeechobee counties.

Thirteenth District—Dade and Monroe counties.

Fourteenth District—Citrus, Flagler, Hernando, Lake, Marion, Osceola, Pasco, St. Johns, Seminole, Sumter and Volusia counties.

Fifteenth District—Citrus, Flagler, Hernando, Lake, Marion, Osceola, Pasco, St. Johns, Seminole, Sumter and Volusia counties.

Sixteenth District—Citrus, Flagler, Hernando, Lake, Marion, Osceola, Pasco, St. Johns, Seminole, Sumter and Volusia counties.

Seventeenth District—Dade and Monroe counties.

Eighteenth District—Duval county.

Nineteenth District—Orange county. The senator elected from the nineteenth senatorial district in 1964 as it then existed shall serve as the senator from the nineteenth district until the general election of 1968.

Twentieth District—Orange county.

Twenty-First District—Hillsborough county.

Twenty-Second District—Hillsborough county.

Twenty-Third District—Hillsborough county.

Twenty-Fourth District—Charlotte, Collier, Glades, Hendry and Lee counties.

Twenty-Fifth District—Alachua, Baker, Bradford, Calhoun, Clay, Columbia, Dixie, Franklin, Gadsden, Gilchrist, Hamilton, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Nassau, Putnam, Suwannee, Taylor, Union and Wakulla counties.

Twenty-Sixth District—Polk county.

Twenty-Seventh District—DeSoto, Hardee, Highlands, Manatee and Sarasota counties.

Twenty-Eighth District—DeSoto, Hardee, Highlands, Manatee and Sarasota counties.

Twenty-Ninth District—Pinellas county.

Thirtieth District—Broward county.

Thirty-First District—Duval county.

Thirty-Second District—Pinellas county.

Thirty-Third District—Palm Beach county.

Thirty-Fourth District—Hillsborough county.

Thirty-Fifth District—Palm Beach county. The senator elected from the thirty-fifth senatorial district in 1964 as it then existed shall serve as the senator from the thirty-fifth district until the general election of 1968.

Thirty-Sixth District—Orange county.

Thirty-Seventh District—Brevard county.

Thirty-Eighth District—Pinellas county.

Thirty-Ninth District—Broward county.

Fortieth District—Dade and Monroe counties.

Forty-First District—Citrus, Flagler, Hernando, Lake, Marion, Osceola, Pasco, St. Johns, Seminole, Sumter and Volusia counties.

Forty-Second District—Dade and Monroe counties. Such district shall consist of all of Monroe county and that part of Dade county which consists of precincts numbered 203, 205, 206, 207, 208, 209, 210, 235, 236, 237, 238, 320, 321, 322, 323, 324, 325 and 326, as they existed and were on file in the office of the Secretary of State as of March 2, 1966, and any changes in the precinct boundaries, after March 2, 1966, shall not affect the senatorial district herein created, unless approved by the legislature in a subsequent reapportionment plan. The senator representing the forty-second district shall reside in and be a duly qualified elector of the forty-second district and shall be elected by the people of Dade and Monroe counties.

Forty-Third District—Dade and Monroe counties.

Forty-Fourth District—Dade and Monroe counties.

Forty-Fifth District—Dade and Monroe counties.

Forty-Sixth District—Dade and Monroe counties.

Forty-Seventh District—Dade and Monroe counties.

Forty-Eighth District—Broward county.

(3) The senatorial offices herein created by Section 1 of this act and designated by an even numbered senatorial district number shall be filled at the general election of 1966 for a four (4) year term. The senatorial offices herein created by Section 1 of this act and designated by an odd numbered senatorial district number, except as otherwise provided herein, shall be filled at the general election of 1966 for a two (2) year term ending at the general election of 1968 and thereafter for four (4) year terms. All senators, except as herein provided, and except when vacancies are to be filled for unexpired terms, shall be elected for four (4) year terms.

Section 2. A candidate for the office of the state senator shall have been a bona fide resident of the district from which he qualifies for a period of at least six (6) months prior to the qualifying date.

Section 3. (1) The house of representatives of the Florida legislature shall consist of one hundred seventeen (117) members apportioned among the counties according to the latest federal decennial census of population. Until reapportioned according to the census of 1970 the representation in the house of representatives shall be apportioned as follows:

County or Counties	*Number of Members*
Bay and Gulf	2
Escambia	4
Holmes, Walton and Washington	1
Okaloosa and Santa Rosa	2
Jackson and Calhoun	1
Gadsden and Liberty	1
Leon, Wakulla, Franklin	2
Jefferson, Dixie, Taylor, Levy	1
Hamilton, Suwannee, Madison, Lafayette	1
Gilchrist, Putnam, Alachua	3
Union, Bradford, Clay	1
Nassau, Baker, Columbia	1
Duval	11
Citrus, Hernando, Marion, Sumter	2
Flagler, St. Johns	1
Lake, Seminole	3
Pasco	1
Volusia	3
Brevard	3
Orange, Osceola	6

Hillsborough	9
DeSoto, Hardee, Highlands	1
Manatee	2
Polk	4
Sarasota	2
Pinellas	9
Charlotte, Collier, Glades, Hendry, Lee	2
Indian River, Martin, Okeechobee, St. Lucie	2
Palm Beach	5
Broward	8
Dade	22
Monroe	1

(2) Members of the house shall be qualified electors of, reside in and be elected at large by the qualified electors in the county or multi-county districts for which they are chosen unless otherwise provided herein; provided, that in the multi-county district of Lake and Seminole one representative shall be a resident of Lake county and one member shall be a resident of Seminole county and the other representative shall be a resident of either county; provided that in any multi-county legislative district having two members, with one county thereof having a population in excess of 39,000 and the aggregate population

of the remaining counties is in excess of 39,000, one member shall reside in the largest county, and one member shall reside in any one of the remaining counties.

Section 4. Members of the house of representatives are to be elected for two (2) years.

(a) The senatorial offices herein created by Section 1 of this act and designated by an even numbered senatorial district number shall be filled at the general election of 1966 for a four (4) year term. The senatorial offices herein created by Section 1 of this act and designated by an odd numbered senatorial district number, except as otherwise provided herein, shall be filled at the general election of 1966 for a two (2) year term ending at the general election of 1968 and thereafter for four (4) year terms. All senators, except as herein provided, and except when vacancies are to be filled for unexpired terms, shall be elected for four (4) year terms.

Section 5. The provisions of this act are severable and if any word, sentence, paragraph, subsections or sections of the act shall for any reason be held void or unconstitutional by any court of competent jurisdiction, the decision of said court shall not affect or impair the validity of any of the remaining words, sentences, paragraphs, subsections or sections of this act.

Section 6. Candidates for offices created herein shall be nominated in 1966 in the manner provided by law and the offices shall be filled at the general election in November, 1966.

Section 7. For the purposes of conducting the elections and creating the offices to be filled by this act, this act shall take effect immediately upon becoming a law; but for the purposes of repeal of the law providing for the apportionment of the legislature under Chapter 10, Florida Statutes, as it existed on June 1, 1965, this act shall take effect on the Tuesday after the first Monday, November, 1966.

APPENDIX A-1

48 Senatorial Districts

Maximum Population — Variance Ratio of 1.30 to 1

48.61% of the Population elects 50% of the Senate

Senatorial District	Counties	Number of Sen.	Total Population	Avg. Population per Senator	% Variation Under Average	% Variation Over Average
1,2	Escambia & Santa Rosa	2	203,376	101,688	1.46	
3	Okloosa, Walton & Holmes	1	87,595	87,595	15.09	
4	Washington, Bay & Gulf	1	88,317	88,317	14.39	
5,6,8,25	Jackson, Calhoun, Gadsden, Liberty, Franklin, Waukulla, Leon, Jefferson,					

Senatorial District	Counties	Number of Sen.	Total Population	Avg. Population per Senator	% Variation Under Average	% Variation Over Average
	Madison, Taylor, Dixie, Lafayette, Suwannee, Hamilton, Columbia, Gilchrist, Levy, Alachua, Putnam, Clay, Union, Bradford, Baker & Nassau	4	443,885	110,971		7.57
9,10,18,31	Duval	4	455,411	113,853		10.37
14,15,16, 41	St. Johns, Flagler, Volusia, Seminole, Lake, Osceola, Sumter, Marion, Citrus, Hernando, & Pasco	4	412,021	103,005	0.15	
19,20,36	Orange	3	263,540	87,847	14.84	
37	Brevard	1	111,435	111,435		8.02
11,29,32, 38	Pinellas	4	374,665	93,666	9.20	

Senatorial District	Counties	Number of Sen.	Total Population	Avg. Population per Senator	% Variation Under Average	% Variation Over Average
21,22,23, 34	Hillsborough	4	397,788	99,447	3.60	
27,28	Manatee, Sarasota, Hardee, DeSoto, & Highlands	2	191,454	95,727	7.20	
7,26	Polk	2	195,139	97,570	5.42	
12,	Indian River, Okeechobee, St. Lucie & Martin	1	87,959	87,959	14.73	
24	Charlottee, Glades, Hendry, Lee & Collier	1	93,955	93,955	8.92	
33,35	Palm Beach	2	228,106	114,053		10.56
30,39,48	Broward	3	333,946	111,315		7.91
13,17,40, 42,43,44, 45,46,47	Dade & Monroe	9	982,968	109,219		5.88
		48	4,951,560			

App. 18

APPENDIX A-2

117 Representatives

Average per Representative, 42,321. Maximum Population-Variance Ratio of 1.41 to 1, 50.43% of the Population elects 50.43% of the House.

Counties	No. of Rep.	Total Pop.	Aver. Pop. per. Rep.	Per Cent Variation Under Aver.	Per Cent Variation Over Aver.
Bay and Gulf	2	77,068	38,534	8.95	
Escambia	4	173,829	43,457		2.68
Holmes, Walton and Washington	1	37,669	37,669	10.99	
Okaloosa and Santa Rosa	2	90,722	45,361		7.18
Jackson and Calhoun	1	43,630	43,630		3.09
Gadsden and Liberty	1	45,127	45,127		6.63
Leon, Wakulla, Franklin	2	86,058	43,029		1.67

Counties	No. of Rep.	Total Pop.	Aver. Pop. per Rep.	Per cent Variation Under Aver.	Per cent Variation Over Aver.
Jefferson, Dixie Taylor, Levy	1	37,554	37,554	11.27	
Hamilton, Suwannee, Madison, Lafayette	1	39,709	39,709	6.17	
Gilchrist, Putnam, Alachua	3	109,154	36,385	14.03	
Union, Bradford, Clay	1	38,024	38,024	10.15	
Nassau, Baker, Columbia	1	44,629	44,629		5.45
Duval	11	455,411	41,401	2.17	
Citrus, Hernando, Marion, Sumter	2	83,958	41,979	0.81	
Flagler, St. Johns	1	34,600	34,600	18.24	
Lake, Seminole	3	112,330	37,443	11.53	
Pasco	1	36,785	36,785	13.08	
Volusia	3	125,319	41,773	1.29	
Brevard	3	111,435	37,145	12.23	
Orange, Osceola	6	282,569	47,095		11.28

Counties	No. of Rep.	Total Pop.	Aver. Pop. per Rep.	Per cent Variation Under Aver.	Per cent Variation Over Aver.
Hillsborough	9	397,788	44,199		4.44
DeSoto, Hardee, Highlands	1	45,391	45,391		7.25
Manatee	2	69,168	34,584	18.28	
Polk	4	195,139	48,785		15.27
Sarasota	2	76,895	38,448	9.15	
Pinellas	9	374,665	41,629	1.64	
Charlotte, Collier, Glades, Hendry, Lee	2	93,955	46,978		11.00
Indian River, Martin, Okeechobee, St. Lucie	2	87,959	43,980		3.92
Palm Beach	5	228,106	45,621		7.80
Broward	8	333,946	41,743	1.37	
Dade	22	935,047	42,502		0.43
Monroe	1	47,921	47,921		13.23
	117	4,951,560			

APPENDIX B

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA, MIAMI DIVISION

RICHARD H. M. SWANN, Plaintiff,
v. No. 186-62-M-CIVIL-DD
TOM ADAMS, Secretary of State of the State of Florida, et al., Defendants.

Before JONES, Circuit Judge, and McRAE and DYER, District Judges

PER CURIAM:

Following the order of the United States Supreme Court that a valid reapportionment plan be made effective for the 1966 elections, see Swann v. Adams, 34 U.S.L. Week 3291 (U.S. Feb. 25, 1966), the Florida Legislature met in special session in March 1966 and passed a 48-senator, 117-representative plan. The state urges this court to accept that plan, arguing that it meets in all respects the federal constitutional one-man, one-vote requirement laid down in Reynolds v. Sims, 377 U.S. 533 (1964).

Plaintiff's major contention is that the variations in population per representative and senator are too great. Mathematical exactness or precision is not required, of

course, but apportionment must be substantially on a population basis. Various tests have been used to analyze how close other plans have come to the ideal: the percentage deviation of a district's population from the average population per district, the population ratio of the largest district to the smallest district in the state, and the minimum percentage of persons in the state represented by a majority of the legislature.

Applying these tests to the proposed Florida plan, we find that the senate districts range from 87,595 to 114,053 in population per senator, or from 15.09% overrepresented to 10.56% underrepresented, creating a ratio of 1.30:1 between the largest and smallest districts. The deviation from the average population per senator is greater than 15% in only 1 district and is greater than 10% in 11 other districts. The minimum percentage of persons that could elect a majorty of 25 senators would be 48.38%.

The suggested house districts range from 34,584 to 48,785 in population per representative, or from 18.28% overrepresented to 15.27% underrepresented, creating a population ratio of 1.41:1. The deviation from the average is greater than 15% in 7 districts and is greater than 10% in 22 other districts. The minimum percentage of persons that could elect a majority of 58 representatives is 47.79%.

Taken individually these statistics mean little, but collectively they tend to indicate that the legislature's proposed plan is constitutionally valid. Compare WMCA,

Inc. v. Lomenzo, 238 F. Supp. 916 (S.D.N.Y.), *aff'd per curiam*, 382 U.S. 4 (1965). Such departures as there are from the ideal are not sufficient in number or great enough in percentages to require an upsetting of the legislative plan. More important, what deviation there is does not discriminate to any great extent against any section of the state or against either rural or urban interests.

Other aspects of the proposed plan also have come under attack. First, three senators would not be required to run for reelection in 1966, but would be allowed to finish their present terms, which expire in 1968. Since these senators were elected in districts that are identical in territory to their districts under the proposed plan, we find no federal constitutional infirmity in allowing these senators to be continued in office. Second, one senate and six house seats are subject to residency requirements. We upheld such arrangements in a previous order and see no reason to reach any different result here. *Accord*, Fortson v. Dorsey, 379 U.S. 433 (1965). Finally, the proposed plan contains several multicounty, multirepresentative or multisenator districts. However unwise and undesirable these may be, we find nothing in their nature that violates the federal constitution. See Fortson v. Dorsey, *supra*.

An order will be entered herein in accordance with the present opinion.

ORDER

It is, upon consideration,

ORDERED AND ADJUDGED:

The plan of apportionment of the Florida Legislature, as found in HB 17-X(66), enacted in March 1966, meets federal constitutional standards and is accepted by this court as the standard to be used in selecting members for the 1967 session of the Florida Legislature.

DONE AND ORDERED this 18th day of March, 1966.

/s/Warren L. Jones
Warren L. Jones

United States Circuit Judge

/s/Wm. A. McRae, Jr.
William A. McRae, Jr.

United States District Judge

/s/David W. Dyer
David W. Dyer

United States District Judge

APPENDIX B-1

SUPREME COURT OF THE UNITED STATES

SWANN *v.* ADAMS et. al.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA.

No. 297. Decided June 22, 1964.

Per Curiam.

The judgment below is reversed. *Reynolds v. Sims*, — U. S. —. The case is remanded for further proceedings consistent with the views stated in our opinions in *Reynolds* v. *Sims* and in the other cases relating to state legislative apportionment decided along with *Reynolds*.

Mr. Justice Clark would reverse on the grounds stated in his opinion in Reynolds v. Sims, _____ U. S. _____.

Mr. Justice Stewart would remand for further proceedings consistent with the views expressed in his dissenting opinion in *Lucas* v. *Colorado General Assembly* and *WMCA, Inc.* v. *Lomenzo*, — U. S. — .

Mr. Justice Harlan dissents for the reasons stated in his dissenting opinion in *Reynolds* v. *Sims*, — U. S. —.

APPENDIX B-2

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA, MIAMI DIVISION

RICHARD H. M. SWANN, Plaintiff,
v. No. 186-62-M-CIVIL-DD
TOM ADAMS, Secretary of State of the State of Florida, et. al., Defendants.

Before JONES, Circuit Judge and McRAE and DYER, District Judges

PER CURIAM:

Before this Court for determination is the question of the constitutional validity of a statute of Florida enacted at a 1965 Special Session of its Legislature, designated as HB 19-XX, providing for the apportionment of the membership of the Florida State Senate and House of Representatives. A copy of the statute is annexed as an appendix. The statutory apportionment as made by HB 19-XX has been subjected to several grounds of attack. It is urged that the provisions of Section 1(3) are invalid. This Section continues in office those senators, whose districts have been abolished, for the remainder of the term to

which they were elected, which would be until the general election of November, 1968. It is contended that the provisions of Section 1(5) of the Act cannot be upheld. This Section requires that where two or more counties are assigned more than one senatorial district, no two senators representing any district comprised of such counties shall reside in the same county until each county has a senator residing and qualified to vote therein. It is said that the subdistricting of Dade County but not other counties is an unwarranted discrimination. The most serious of the questions presented are those which deal with the one man-one vote, equality of representation principle. Other issues are raised but are, in the Court's opinion, without merit and without sufficient plausibility to require discussion.

It seems apparent that the carrying forward into a newly constituted legislature those senators, previously elected, who no longer have a constituency cannot be upheld. To permit these senators to serve who will no longer be representing any electors would result in giving an added weight to the votes of the electors of those areas from which they were originally chosen. To eliminate this inequality the Act (HB 19-XX) must be modified by the deletion of Section 1(3).

It is not shown that Section 1(5) is unconstitutional. The effect of this Section is to prevent the election of two or more senators from any county until a senator has been elected from each county where two or more counties are combined in two or more senatorial districts. By way of

example, Duval County, with a 1960 population of 455,411, is combined with Nassau County, with a population of 17,189, and St. John's County, with a population of 30,034, in senatorial districts numbered 16, 18, 21, 31, 33 and 58. Thus it is provided that Nassau, with about three percent of the population of the districts and St. John's with about six percent of the population of the districts, will each have one-sixth of the senatorial representation from the multi-county districts. The provision relates to residence of the senators and not to the voting strength of those who elect them. Although each county of the multi-county districts is entitled to have a senator resident within it, the tenure of such senators depends upon the district-wide electorate. Such senator represents, not the county where he resides, but the district. The weight of the voter in the most populous of the multi-county districts (Duval County in the stated example) for senators to represent him is approximately equal in weight to voters in the less populous counties. This question is the same as was decided in *Fortson* v *Dorsey*, 379 U.S. 433, 85 S. Ct. 498, 13 L.Ed. 2d 401, where several districts were within a county. It has not been suggested that the residence requirement in the Florida statute was intended to minimize or cancel out the voting strength of racial or political elements of the voting population, or that it would have such effect. Cf. Fortson v. Dorsey, supra.

Dade and Monroe Counties comprise six senatorial districts under the statute. Two districts, numbered 12 and 39, are composed of that part of Dade County comprising the third congressional district as it existed on

June 1, 1965. Two other districts, numbered 40 and 41, are made up of that portion of Dade and Monroe Counties comprising the fourth congressional district as it existed on June 1, 1965. In no other instance are legislators elected from districts with other boundaries than county lines. It is asserted that this is an illegal discrimination. It has not been made to appear that these districts were set up for the purpose of lessening or enhancing the weight of the votes of the citizens residing in these districts, or that it was designed to or did affect the voting strength of any racial or political group. This being so, it cannot be said that the Federally protected right of equality of voting strength has been violated. If there has been any resulting injustice it is a political one for which a political remedy should be sought.

We are now brought to the problem as to whether the allocation of senators and representatives among the citizens of the State is so disproportionate as to amount to the invidious discrimination which has been condemned as violative of the Equal Protection Clause. Efforts have been made by some of the amici curiae to defend the legislative enactment, and to persuade us that the statutory departures from the equal population principle are within permissible limits. The Attorney General of Florida, with commendable candor, concedes that the standard has not been met, but urges that we should once more afford the State of Florida, acting through its legislature, an opportunity to put its legislative house in order. If this can be done we think it should be done. In attempting to solve problems of the legislative apportionment factors other

than one person-one vote may loom large. Adjacent counties, neither of which has a population sufficient to have a senator or representative by itself, may be so wholly different in economic character that it would be inadvisable to unite them for the purpose of legislative representation. We can recognize that such problems can and do exist but we have no claim to the competence required to solve them. It is the belief of the Court that the Florida legislature, as it will be constituted under the statute with the Section 1 (3) senators eliminated, will have a majority such as will permit, if there be the will to do so, a correction of the malapportionment which exists under the Act. In accepting the legislative enactment as an interim measure, the Court does not overlook the prior indulgence which had been granted but we are reminded that our prior order was entered before the guidelines of Reynolds v. Sims, supra, and other decisions of the Supreme Court had been drawn. In affording a further opportunity to the Florida legislature to adopt a constitutionally acceptable apportionment, we have the confident hope that there will be a recognition, by the legislative bodies, of the paramount necessity of conforming to the constitutional requirement that "both houses of a state legislature must be apportioned on a population basis," and that the "state make an honest and good faith effort to construct districts in both houses of its legislature, as nearly of equal population as is practicable." Reynolds v. Sims, 377 U.S. 533, 577, 84 S. Ct. 1362, 12 L. Ed. 2d 506. Precise exactness cannot, of course, be achieved but only such minimal departures as necessity demands will be permitted. Variations are to be sanctioned only when they cannot be

avoided. We do not think it can be assumed that the fifteen percent variance allowed in Toombs v. Forston, N.D. Ga. 1965, 241 F. Supp. 65, establishes a rule of tolerance that will be followed as a legal principle. If the Florida legislature does not adopt a valid plan of apportionment then this Court must do so; and so that it may, if need be, do so, jurisdiction will be retained. No further action will be taken by the Court until the adjournment of the next regular session of the legislature or, in the event it shall not have enacted reapportionment legislation, until the lapse of the time required to convene and hold a legislative special session for reapportionment.

ORDER

The premises considered, it is ORDERED, ADJUDGED and DECREED that:

1. The plan of apportionment of the Florida legislature, as made by HB 19-XX enacted at its special session in 1965, in both the Senate and House of Representatives does not meet the requirements of the Equal Protection Clause of the Federal Constitution as construed and applied in Reynolds v. Sims, supra, and other decisions of the Supreme Court. The apportionment made by said statute, as herein modified, is approved as an interim plan for a period ending sixty days after the adjournment of the 1967 regular session of the Florida legislature;

2. The provisions of Section 1(3) of said statute are in violation of the Equal Protection Clause of the Federal

Constitution. The statute, and the plan of apportionment thereby enacted, are modified by deleting and striking therefrom the aforesaid Section 1(3); and

3. The Court retains jurisdiction of this cause until such time as there shall be an adjudication that a valid plan of legislative apportionment has been enacted, or until such a plan has been made effective by a decree of this Court.

DONE, ORDERED and DECREED this 23rd day of December, 1965.

/s/Warren L. Jones
Warren L. Jones
United States Circuit Judge

/s/Wm. A. McRae, Jr.
William A. McRae, Jr.
United States District Judge

/s/David W. Dyer
David W. Dyer
United States District Judge

APPENDIX B-3

SUPREME COURT OF THE UNITED STATES

SWANN et al. *v.* ADAMS et. al.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA.

No. 973 Decided February 25, 1966.

Per Curiam.

We previously remanded this case to the District Court for further proceedings in light of *Reynolds* v. *Sims*, 377 U. S. 533, and the other cases relating to legislative reapportionment decided with *Reynolds*, 378 U. S. 553. The District Court deferred action until the conclusion of the legislative session which convened on April 6, 1964, stating that it would reconsider its decision should the Florida Legislature fail to effect a valid reapportionment by July 1, 1965.

A reapportionment law was passed by the legislature on June 29, 1965. On July 6 the appellants filed a joint petition asking the District Court to declare the newly enacted plan unconstitutional and proposing an alternative plan. The District Court did not take action until October 5 when it ordered oral argument for November 2, 1965. On December 23 the District Court concluded that the newly passed reapportionment plan failed to "meet

the requirements of the Equal Protection Clause of the Federal Constitution as construed and applied in *Reynolds* v. *Sims* . . . ."

Although the District Court concluded that the plan did not comport with constitutional requirements, it approved the plan (making only minor changes) on an interim basis. Its approval was limited to the period ending 60 days after the adjournment of the 1967 session of the Florida Legislature.

We have no occasion to review the District Court's determination that the legislative reapportionment plan fails to meet constitutional standards. Indeed, Florida does not contend that the District Court erred in this regard, having conceded below that the plan was constitutionally deficient. We hold, however, that in approving the plan on an interim basis, the District Court erred. This litigation was commenced in 1962. The effect of the District Court's decision is to delay effectuation of a valid apportionment in Florida until at least 1969. While recognizing the desirability of permitting the Florida Legislature to itself determine the course of reapportionment, we find no warrant for perpetuating what all concede to be an unconstitutional apportionment for another three years.

We reverse and remand to the District Court so that a valid reapportionment plan will be made effective for the 1966 elections.

Reversed.

Mr. Justice Harlan and Mr. Justice Stewart would affirm the judgment.

Mr. Justice Fortas took no part in the consideration or decision of this case.

APPENDIX C

STATE OF FLORIDA

Office Of The

ATTORNEY GENERAL

Tallahassee

March 2, 1966

CRITERIA AND GUIDELINES FOR REAPPORTIONMENT AS ESTABLISHED BY THE FEDERAL COURTS.

By: Earl Faircloth
Attorney General

1. A majority of the people must be able to elect a majority of the Legislature.

2. Membership in both houses must be apportioned on a population basis.

3. Consideration of area, economic interest or political subdivisions standing alone do not provide valid criteria

for apportionment but a combination of these factors may be used so long as population is a major consideration. Under no circumstances may these or any other factors be used except on the basis of a rational or reasonable plan of apportionment.

4. Neither mathematical exactitude nor a rigid and uniform formula is required, but each plan must be reviewed on its own merits and any deviation from population must be justified.

5. The 1960 federal census must be the criteria for determining the population of a county.

6. The allowable mathematical percentage variance differs in some of the Supreme Court decisions. However, a study of these decisions reveals that a percentage variance of more than 15% would be difficult to sustain as complying with "one man - one vote." It is therefore respectfully submitted that a percentage variation not exceed 15%.